

8 September 1986
OCA 86-2999

MEMORANDUM FOR:

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Chief, Litigation Division, OGC

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[redacted]
Chief, Information, Privacy Division, OIS

FROM:

[redacted]
Legislation Division
Office of Congressional Affairs

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SUBJECT: Computer Matching Bill

1. Senator Cohen recently introduced S. 2756, the "Computer Matching and Privacy Protection Act of 1986." This bill would amend the Privacy Act by adding a new section restricting computerized comparison of records to identify individuals common to both record systems. The bill also would require the establishment of a Data Integrity Board in all federal agencies to oversee implementation of the Privacy Act. Attached for your information is a copy of the bill and Senator Cohen's statement accompanying introduction of the bill.

2. The purpose of the legislation is to reduce the possibility that an individual can be deprived of certain benefits based on unverified information produced by a computer match. The bill would require federal agencies to enter into written agreements before disclosing records for use in a computer matching program. These agreements must contain the justification for conducting a computer matching program, a description of the records that will be matched, a requirement that individuals whose records are matched will be notified of such matching program, procedures for verifying the matched information, and controls on the dissemination of the information.

3. My initial reaction is that the bill would adversely impact on the operations of this Agency and that an effort should be made to amend the bill to exempt the Agency from the provisions of the bill pertaining to computer matching and the Data Integrity Board. Clearly, this Agency cannot be put in a position of having to disclose to an individual the fact that we have requested information from another federal agency on that individual without compromising the particular intelligence operation underway. Furthermore, the requirements regarding verification of information should not apply to intelligence operations. In my judgment, the bill has been written far too broadly and needs to be amended so that it only applies to those federal agencies that deal on a regular basis with the provision of government benefits; e.g., food stamps, etc., to individuals.

4. There is not sufficient time for Congress to take action on this bill in this session of Congress. However, Mary Gerwin, a staffer on the Senate Governmental Affairs Committee, informs me that Senator Cohen wants the Subcommittee on Oversight of Government Management to report out the bill prior to adjournment of Congress in early October. The Senator will then re-introduce the bill next year with those amendments added by the Subcommittee. A hearing has been scheduled for September 16th on the bill. Appearing at the hearing will be OMB, HHS and the ACLU. Ms. Gerwin also stated that the views of several agencies have been solicited with respect to the bill. I informed Ms. Gerwin that the bill could pose a substantial problem for the Agency and requested that our views be officially solicited. She stated that we would shortly receive a request for the views of the Agency on the bill from Senator Cohen. Ms. Gerwin also requested that we provide our response no later than 26 September. Ms. Gerwin stated that bill was not aimed at the CIA, and that the Committee would probably be willing to amend the bill so as to avoid any adverse impact on the Agency.

5. One easy way to fix the bill is to amend subsection (j) of the Privacy Act, which specifies those sections of the Privacy Act that do not apply to the Agency. If that subsection were amended to include proposed new subsections (o) and (s), we would be exempt from the new requirements. I propose to make this recommendation in our response to Senator Cohen.

6. I would appreciate receiving your comments on the bill no later than 12 September. You may provide oral comments to me in lieu of a written response. I will then draft a letter to Senator Cohen containing our views, which will be circulated to you for comment. The letter would then be sent to OMB for clearance. Based on previous experience with OMB, I doubt that they will clear our letter by the stated deadline. We could nevertheless provide our informal views to the staff so that our position is taken into account during markup of the bill by the Subcommittee.



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Attachments
as stated

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OCA/LEG/ (8 Sept 1986)

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